

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MOTOR CITY INTERMODAL DISTRIBUTION, INC.

Employer

and

FEDERATION OF PRIVATE EMPLOYEES, A DIVISION OF THE
NATIONAL FEDERATION OF PUBLIC AND PRIVATE EMPLOYEES,
AFL-CIO, AFFILIATED WITH DISTRICT 1, PACIFIC COAST DIVISION
OF THE MARINE ENGINEERS BENEFICIAL ASSOCIATION (MEBA), AFL-CIO

CASE 7-RC-22094

Petitioner

and

DISTRICT 2A, TRANSPORTATION, TECHNICAL, WAREHOUSE,
INDUSTRIAL AND SERVICE EMPLOYEES UNION, AFFILIATED WITH
AMERICAN MARITIME OFFICERS^{1/}

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,^{2/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{3/}
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.^{4/}
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{5/}

All full-time and regular part-time warehouse employees employed by the Employer at its facility located at 4485 West Jefferson, Detroit, Michigan; but excluding confidential employees, professional employees, clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll

period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

FEDERATION OF PRIVATE EMPLOYEES, A DIVISION OF THE NATIONAL FEDERATION OF PUBLIC AND PRIVATE EMPLOYEES, AFL-CIO, AFFILIATED WITH DISTRICT 1, PACIFIC COAST DIVISION OF THE MARINE ENGINEERS BENEFICIAL ASSOCIATION (MEBA), AFL-CIO

or

DISTRICT 2A, TRANSPORTATION, TECHNICAL, WAREHOUSE, INDUSTRIAL AND SERVICE EMPLOYEES UNION, AFFILIATED WITH AMERICAN MARITIME OFFICERS

or

NO UNION

LIST OF VOTERS^{6/}

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **November 15, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **NOVEMBER 23, 2001**.



Dated _____
at Detroit, Michigan

/s/ William C. Schaub, Jr.
Regional Director, Region Seven

Section 103.20 of the Board's Rules concerns the posting of election notices.

Your attention is directed to the attached copy of that Section.

^{6/} If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.

- 1/ The names of the parties appear as corrected at the hearing.
- 2/ The Petitioner and Intervenor filed briefs, which were carefully considered.
- 3/ The Employer is engaged in a warehouse operation.
- 4/ The Intervenor, contrary to the Petitioner, contends that the instant petition is barred because it was filed during a 30-day extension to the expired collective bargaining agreement between the Intervenor and the Employer. The Employer takes no position as to the Intervenor's contract bar argument.

The undisputed facts are that the three-year collective bargaining agreement between the Intervenor and Employer expired on September 30, 2001. Shortly before expiration while negotiations for a successor agreement were continuing, the Intervenor and Employer negotiated an agreement that "should negotiations continue past October 1, 2001, that all wage increases and changes in the collective bargaining agreement are retroactive to Oct. 1, 2001." Below the signatures of the parties is the following language: "This is a 30 day extension." The Petitioner filed the instant petition on October 3, 2001.

Although the extension of the expired contract is for a set duration, the retroactivity of any successor agreement negotiated during the term of the 30-day extension makes the extension agreement qualified by a condition subsequent as in *Frye & Smith, Ltd.*, 151 NLRB 49 (1965). Thus, the extension agreement was of an indefinite duration and did not bar the instant petition since those wishing to file a representation petition are not apprised of the open period. *Crompton Co.*, 260 NLRB 417 (1982).

However, assuming arguendo as urged by the Intervenor, that the extension agreement was of a definite term, it still will not bar the Petitioner's petition because the agreement is less than 90 days in duration. See *Asociacion Hospital Del Maestro*, 272 NLRB 853, 854 (1984). Because of its short duration, a contract extension of less than 90 days fails to provide the requisite 60 to 90 day open period for the filing of a representation petition. Furthermore, such a short-term agreement provides little in the way of industrial stability, which is an underlying objective of the Board's contract bar rules. *Crompton Co.*, supra at 418.

Accordingly, for the above reasons, the extension agreement is not a bar to the instant petition.

- 5/ The stipulated unit encompasses approximately four or five employees.

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